

IN THE MATTER OF	:	BEFORE THE
PLUMTREE, LLC	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	BA Case No. 07-003S

DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on January 10, 2008, to hear the petition of Plumtree, LLC, Petitioner, for variances to erect a 24-foot high by 8-foot wide, 80.2-square foot, freestanding pylon identification sign with a one-foot right-of-way setback rather than the 80-foot setback required in relation to the total sign area and the 48-foot setback required in relation to the sign height, and a 9-foot high by 11-foot wide, 99-square foot wall sign in the shape of a large three-dimensional crab. The Petitioner is also seeking to vary the total allowable signage area from 194 to 334 square feet because the combined area of the existing and proposed signage exceeds the total permissible signage area. The variances are requested in a B-2 (Business: General) Zoning District. This Petition is filed pursuant to Section 3.513 of the Howard County Code.

All Board members were present and Chairperson Albert Hayes presided at the meeting. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioner was represented by counsel, Thomas M. Meachum. Bill King and Mark Belsinger appeared in support of the petition. No one appeared in opposition to the petition.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Zoning Regulations. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

This case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. Pursuant to the Board's Rules, the following items were incorporated into the record by reference:

1. The appropriate provisions of the Howard County Charter;
2. The appropriate provisions of the Howard County Code;
3. The recommendation of approval of the Department of Inspections, Licenses and Permits dated July 19, 2007;
4. The General Plan for Howard County;
5. The General Plan of Highways; and
6. The Petition and plat submitted by the Petitioner.

As a preliminary matter the Board accepted into evidence the following exhibits:

Exhibit # 1- "Understanding the Value of Signage," from the U.S. Small Business Administration's website.

Exhibit # 2-A and 2-B- The proposed freestanding pylon sign and an image of the crab on the building frontage.

Exhibit # 3- Area commercial property information, including square footage and maps from the Maryland Department of Assessments and Taxation website used to demonstrate the Property's location and disproportionately smaller road frontage relative to other area properties.

Exhibit # 4- A comparison of area commercial frontages, based on the Howard County Zoning Map.

Exhibit # 5- A calculation of the total signage area for the Property.

Exhibit # 6 (A-F)- Seven photographic views of the Property from US 40 and Frederick Road.

Exhibit # 7- Photographs of fifteen (15) businesses in the immediate area that use reader boards, ranging from banks to restaurants to churches to other businesses.

FINDINGS OF FACT

Based upon the testimony and exhibits presented at the hearing, the Board makes the following Findings of Fact:

1. The Petitioner is the owner of the subject property, which has an address of 3417 and 3419 Plumtree Drive and is located in the 2nd Election District in Ellicott City (the "Property"). The Property is referenced on Tax Map 24 as Parcel 1115, Lot 8. The 2.36-acre Property is generally rectangular in shape.
2. The Property is to be known as Shanty Plaza. Shanty Plaza is improved by one two-story commercial building, which currently has three tenants. The old Comcast customer service building is also within the Plaza and is currently being renovated for conversion into a restaurant called Pig Pickers BBQ, and a seafood market to be called Sea King. Sea King is currently the carry-out operation of the Crab Shanty restaurant across Plumtree Drive, and has proven so popular that it needs the additional space that will be provided at this location.
3. A third commercial building will be constructed just to the east of the existing building. The plans for this building have been submitted to Howard County for processing.
4. The Property is long and narrow, with frontage only on Plumtree Drive. The Property is over two acres, however, it is sandwiched between the properties to the south which abut Frederick Road and the properties to the north that have frontage on Route 40. The Pig

Pickers BBQ and Sea King carryout seafood market structure has 48 feet of frontage and the two-story building has 49 feet.

5. The Petitioner's Howard County Zoning Map exhibit shows that this is one of the few commercially zoned properties in this area with no frontage on either major collector roads in this area, Route 144 or US Route 40, and the only commercially zoned property whose frontage is disproportionately smaller compared to the property as a whole. Even the small road frontage available to the Property is only on what is characterized as a local road.

6. Unfortunately for signage and visibility purposes, the Property is obscured because of the nature of development and adjacent and vicinal properties. To the north is a property zoned B-2 and improved by a Sunoco gasoline service station. To the west and across Plumtree Drive is a property zoned B-2 and improved by the single-story Crab Shanty Restaurant, also owned by the Petitioner. South of the Property is an R-A-15 (Residential: Apartment) zoned property improved by the three-story brick Plumtree Apartment complex. To the east is a B-2 zoned property improved by the Parker Fuel Company buildings.

7. **Sign A.** The Petitioner is requesting a variance of the Sign Code to erect a 24-foot high by 9-foot wide, 80.2-square foot freestanding pylon identification sign with a one-foot setback from the Plumtree Drive right-of-way and approximately 175 feet south of US Route 40. The Sign Code would require this sign to be located 80 feet back based on the aggregate sign area and 48 feet back in relation to the sign height. The proposed sign will be painted to match building colors and contain two double-faced, internally illuminated signs and an electronic message center on both sign faces. The uppermost double-faced sign contains the words "Pig Pickers" and "Memphis Style Bar B Que" and the Pig Pickers logo. The middle double-faced sign contains an image of a seahorse forming the "S" in the words "Sea King" and "Seafood

Market.” Below this sign is a vacant space reserved for a future sign that is not the subject of the variance request. The bottommost sign is an electronic message center on both sides of the sign.

8. **Sign B.** The Petitioner is also requesting a variance from the total allowable sign area for an existing 9-foot high by 11-foot wide, 99-square foot fiberglass wall sign in the shape of a large three-dimensional crab. The petition states that the crab is over 40 years old and was originally part of the Reisterstown Sea King store.

9. **Total signage area.** Because the Sign Code bases the total permissible signage area on building frontage (2-square feet for each lineal foot per Section 3.501(c)(1)), the Petitioner is also seeking to vary this standard. The total proposed signage area, including the signage area allocated to the existing buildings, the crab, and the freestanding sign, is 334 square feet and the allowable square footage is 194 square feet based on the 97 lineal footage of the building frontage.

10. A large deciduous tree to the north of the Property blocks the view of the Sea King and Pig Pickers building for travelers turning into Plumtree Drive from US Route 40. A pine tree blocks the view of the Property traveling north on Plumtree Drive. Also, the Property is not easily visible from Frederick Road due to the small curve along Plumtree Drive.

11. The speed limit on Plumtree Drive is 30 miles per hour.

12. In support of the Petitioner’s desire to project a presence to travelers on US Route 40, the petition supplement references several conditions that allegedly reduce visibility from that road. However, the Department of Inspections, Licenses and Permits technical staff report recommends that the view of the Sea King and Pig Pickers signs traveling east or west on US Route 40 should not be considered owing to the Plumtree Drive address.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

1. In order to grant a variance to the Howard County Sign Code, the Petitioner must demonstrate by a preponderance of evidence that the provisions of Section 3.513(b) have been met. At a minimum, those requirements include a showing that there are unique physical conditions or exception topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on non-local use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of the Sign Code. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of the Sign Code. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered. The Petitioner also must prove that the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic conditions. Lastly, the Petitioner must demonstrate that the variance is the minimum necessary to afford relief to the Petitioner and that the Petitioner did not create the conditions which create the practical difficulties or hardships in complying with the Sign Code.

2. The evidence before the Board makes evident that the property is relatively narrow along its frontage relative to the depth of the lot, according to the zoning map

accompanying the petition and Petitioner's Exhibit # 3. Therefore, the Board concludes that the narrowness of the lot leads to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

3. The Board concludes that there are obstructions, such as landscaping on abutting property or properties which interfere with the visibility of the proposed sign which creates practical difficulties in complying strictly with the provisions of the Sign Code, in accordance with Section 3.513(b)(2).

4. There are no historical, architectural or aesthetic characteristics of the Property to be considered under Section 3.513(b)(3).

5. The Petitioner proposes to illuminate the freestanding sign only during business hours, thereby eliminating any potentially adverse affects on the adjacent properties. Furthermore, as required by Section 3.513(b)(4), the proposed sign will not result in a dangerous traffic condition due to the sign being generally separated from vicinal commercial and residential properties.

6. The Board concludes that the requested variances are the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code in accordance with Section 3.513(b)(5).

7. The Board concludes that the practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this 31st day of march, 2008, by the Howard County Board of Appeals, **ORDERED:**

That the petition of Plumtree, LLC, for variances to: (1) erect a 24-foot high by 8-foot wide, freestanding pylon identification sign with a one-foot right-of-way setback; (2) retain an existing 9-foot high by 11-foot wide, 99-square foot wall sign in the shape of a large three-dimensional crab, and; (3) increase the total aggregate signage area in a B-2 Zoning District, is hereby **GRANTED** with the following conditions:

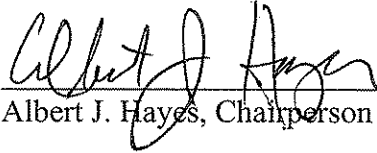
1. The variances shall apply only to the proposed signs as described in the petition and plan submitted to the Board, and not to any other activities, uses, or structures on the subject property.
2. The signage and the electronic message centers on the freestanding pylon sign as proposed in this petition shall be illuminated only during business hours.
3. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS



Ann Nicholson



Albert J. Hayes, Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR

James Walsh, Vice-Chairperson



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